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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DONALD E. MITCHELL JR.,

Plaintiff,

v.

STATE OF NEVADA EX REL *et al.*,

Defendants.

Case No. 2:17-cv-02591-MMD-VCF

ORDER

I. DISCUSSION

On April 17, 2018, this Court issued a screening order which dismissed this case, with prejudice, as malicious and duplicative of Plaintiff's case filed in *Mitchell v. State of Nevada ex rel Nevada Department of Corrections*, 2:17-cv-00986-JAD-PAL ("*Mitchell I*").¹ (ECF No. 3 at 3-4.) The Court also granted Plaintiff's application to proceed *in forma pauperis* and assessed the \$350 filing fee. (*Id.* at 4.) The Clerk of Court entered judgment that same day. (ECF No. 5.)

On April 23, 2018, Plaintiff filed a motion for reconsideration. (ECF No. 6.) Plaintiff asserts that his actions were not malicious and that he did not know that *Mitchell I* had been filed. (*Id.* at 2.) Plaintiff was under the impression that prison officials had intercepted his complaint. (*Id.*) Plaintiff is concerned that he will have to pay the filing fee

¹Judge Dorsey issued a screening order in *Mitchell I* on April 26, 2018 permitting Plaintiff's case to proceed to mediation. (See *Mitchell I*, ECF No. 2.)

1 for both *Mitchell I* and the instant case and asks for the Court's reconsideration. (*Id.* at
2 3.)

3 A motion to reconsider must set forth "some valid reason why the court should
4 reconsider its prior decision" and set "forth facts or law of a strongly convincing nature to
5 persuade the court to reverse its prior decision." *Frasure v. United States*, 256 F.Supp.2d
6 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this Court "(1) is presented
7 with newly discovered evidence, (2) committed clear error or the initial decision was
8 manifestly unjust, or (3) if there is an intervening change in controlling law." *Sch. Dist.*
9 *No. 1J v. Acands, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). "A motion for reconsideration
10 is not an avenue to re-litigate the same issues and arguments upon which the court
11 already has ruled." *Brown v. Kinross Gold, U.S.A.*, 378 F.Supp.2d 1280, 1288 (D. Nev.
12 2005).

13 The Court grants Plaintiff's motion for reconsideration based on the initial decision
14 arguably being manifestly unjust. After reviewing the docket in *Mitchell I*, it appears that
15 the Clerk's Office failed to issue Plaintiff an inmate advisory letter notifying Plaintiff of his
16 case number and the screening process. Based on the docket in *Mitchell I*, Plaintiff did
17 not receive any notices from the Court until he received a screening order one year later.
18 (See *Mitchell I*, ECF Nos. 1, 2.) In contrast, Plaintiff received an inmate advisory letter
19 three days after submitting a complaint in the instant case. (ECF No. 2.) The Court finds
20 it reasonable that Plaintiff was unaware that he had successfully submitted a complaint
21 in *Mitchell I*. As such, the Court will vacate its screening order and the filing fee
22 assessment in the instant case. However, the instant case will remain closed. Plaintiff is
23 directed to proceed on his claims in *Mitchell I*.

24 **II. CONCLUSION**

25 For the foregoing reasons, it is ordered that the motion for reconsideration (ECF
26 No. 6) is granted.

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1 It is further ordered that the Clerk of the Court vacate the screening order (ECF
2 No. 3) in the instant case.

3 It is further ordered that the order directing Plaintiff to pay the \$350 filing fee for
4 this case (ECF No. 3) is vacated. Plaintiff does not have to pay the \$350 filing fee for this
5 case. The Clerk will send a copy of this order to the attention of Chief of Inmate Services
6 for the Nevada Department of Prisons, P.O. Box 7011, Carson City, NV 89702.

7 It is further ordered that this case will remain closed.

8 It is further ordered that Plaintiff will proceed on his claims in *Mitchell v. State of*
9 *Nevada ex rel Nevada Department of Corrections*, 2:17-cv-00986-JAD-PAL.

10 It is further ordered that no further documents be filed in this closed case.

11 DATED THIS 10th day of May 2018.

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14 MIRANDA M. DU
15 UNITED STATES DISTRICT JUDGE
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